

**City of Olean**  
**ZONING BOARD OF APPEALS**

**Minutes for Zoning Board**  
**Meeting held on September 28, 2017**

**1. Roll Call**

Bob Moser called the meeting to order at 5:32p.m. Secretary Thomas Enright read the roll call. All members were present except Otto Tertinek.

**Present:**

- Charlotte Hardy
- Thomas Enright
- Darryl Bloom
- Shayne Certo
- Bob Moser

**Absent:**

- Otto Tertinek

**Staff:**

- Kathleen Hewitt- Account Clerk Typist

**1. Old Business**

**Reading and approval August 24, 2017 meeting minutes.**

A MOTION was made by Thomas Enright, seconded by Darryl Bloom to approve the August 24, 2017 meeting minutes as is. Voice vote, ayes all. Motion carried.

## **2. Public Hearing**

Public Hearing opened at 5:35 p.m.

Thomas Enright read the application regarding 117 S. 4<sup>th</sup> Street aloud requesting to continue as a distribution center for limousine and bus transportation. If granted it will vary from Chapter 28 Article 4 Section 4.2.2 of the Zoning law.

David Carucci was present to represent the Use Variance. He questioned if all member's had the packet he distributed from the previous meeting. Mr. Carucci explained he received a notice September 21, 2016 in that notice he stated he were given a temporary variance to run his business and further states he needed permission to continue.

Mr. Carucci explained he responded to Mr. Jennings letter on September 31, 2017 in which he wrote in his letter if they have a variance in the beginning to be there and was good enough for a whole year to begin with, why aren't they not good enough to be there now. He further explained that he expanded the inside of his business and questioned why he does not fit in the variance anymore.

Mr Carucci explained from September 2012- October 2015 he ran buses from this location continually without anyone saying a word. He noted improvements he has done such as broken down spouts, overgrown foliage and those issues were addressed. He commented he allows the neighbor's to park in the parking lot on street sweeper /snow removal nights.

Mr Carucci improvements he has done on the building are quicker doors, removed all ugly windows, softer lighting, neighbor's complained of noise they modified it so buses returning from 11:00pm-7:00a.m are to pull inside instead of backing in and buses leaving prior they are not to let the buses idle outside. He further stated he offer the drivers a safety bonus of \$2.00 an hour; and if they disobey the outside camera's will see and they are fines \$100.00 out of their driver's bonus if the buses idle outside.

Mr. Carucci talked of business expansion and how he had 12 employees in 2014 and currently now has 36 employees in which 22 are full-time employees and are the primary bread winners of their house.

### **Public Hearing open at 5:46 p.m.**

David Ursoy (128 S. 4<sup>th</sup> St.) States when buses return and backs into the parking lot they pan there lights straight across and into his house approximately 3 or 4 times a night between midnight and 3:00-4:00 a.m. and it wakes him and his children up. He continued he worries about the safety of cars when buses are backing out since he has witnessed a few almost hit the bus due to no flaggers for safety. He noted it is a tight fit to get buses there and all summer they cannot leave windows open due to the noise.

Jennifer Vincent (128 S. 4<sup>th</sup> St.) submitted a packet to the members for viewing, played a visual of Mr. Carucci property to the members on a laptop and also submitted each member a thumb drive of the footage. Jennifer stated that she has been in contact with OSHA in regards to pollution and also the noise that the buses have been idling in the garage without proper ventilation for diesel engine exhausts.

A MOTION to exceed the 3 minute public comment for Jennifer Vincent was made by Bob Moser, seconded by Darryl Bloom. Voice vote, ayes all, Motion carried.

Jennifer continued showing her visual footage on the laptop. Jennifer noted the driver on the video stated he drove until 3:00 a.m. and got up again at 6:00 a.m.

Megan Taylor (116 S. 4<sup>th</sup> St.) she stated she is all for businesses growing in Olean however this is not about a business growing but about a residential neighborhood. She further explains she has written to the mayor in regards to the noise. She states she hears the beeping of the buses, the loud engines, she hears air breaks/Jake breaks in the middle of the night, and she hears employees coming to and from work and the jostling of the buses. Megan is concerned of the resale value of her home. She noted when she purchased her house Rocky was selling the business and she noticed only a couple of deliveries during business hours. She is also concerned of semis on Fourth Street. She noted if the city wants to give her a tax break then she can benefit also. Megan stated she has not heard the buses a lot this summer due to her AC unit however; what will the winter be like. She questioned why he was allowed to move in there if it is not in code.

Sam M. (118 S. 4<sup>th</sup> St.) He explained he lives across the street from Mr. Carucci and has firsthand knowledge of both Mr. Carucci and Rocky. He noted when Rocky was there he would have to deal with the semis and safety issues. Sam continued since Mr. Carucci has purchased the property there is more traffic however; Mr. Carucci has worked with the neighborhood with any issues. He noted if Mr. Carucci is pushed out then who will move into the already commercial building. Sam hopes that this issue can get worked out with both parties.

Christina Baire (130 S. Fourth St.) She would like to address some of the issues that were brought up. She noted people complained of noise, lights from buses and safety issues and they are all very good issues to being up however; Mr. Carucci does and will address the issued since

he is a conscientious and safety oriented business owner. Christina referred to the individual that brought up the concern of the resale value of her home. She explained the market value of their homes since 2012 have either remained the same as when the assessment was done at 90% or most of the homes have increased within the last 2 years and 2 of the homes on the street have the highest (which one home is Christina's). She reiterated the business has not reflected the value of the homes however; that does not mean the sale of the homes will not because house sales in general in Olean are not up. Christina stated that businesses are being forced out and that is why this business was zoned for commercial use. She noted she agrees with Sam and that when Rocky owned the business it was loud and constant and when Mr. Carucci acquired the property it has been silent.

Jennifer Hale (115 S. 4<sup>th</sup> St.) Jennifer stated she basically shares a driveway due to they are connected. She explained besides the constant beeping of buses all hours of the night, the employee's cars are doing so much damage to her yard. She explained she requested them not to use the corner of her yard and since the damage continued she installed wood and metal stakes which continued to get knocked over by vehicles. She noted the damaged stopped once the neighborhood received letters for this public hearing. She continued that car's coming in and out are going too fast and she has tiny grandchildren. She reiterated the buses coming in after 11:00pm are too noisy and she cannot sleep and the smell is hard to want to be in the neighborhood.

Leonard Anzivine (129, 123 & 125 S. Fourth St.) He explained he has property right next to Mr. Carucci shop. Leonard explained he addressed Mr. Carucci in regards to idling buses and it did not stop. He explained the fumes go into the apartment and he lost a tenant and now he has a new tenant and the fumes are still coming into the apartment. Leonard questioned the Zoning Board members when Mr. Carucci went into the building in 2012 was it a legal variance. Charlotte Hardy responded when the Use Variance was granted for Rocky it was for a specific purpose and not for another company with another agenda. She further explained when Mr. Carucci went into the building and assumed that he had the variance for his business and that was not right. She continued that Mr. Carucci had temporary permission to be there. Leonard noted that he complained of Rocky as well.

Leonard continued that his property floods his back yard at 123 S. 4<sup>th</sup> St. he explained Mr. Carucci did fix up a little but the one pipe is still dripping. Leonard questioned the process of retrieving a variance and why it was not done prior to this point. Charlotte responded that different variances have different procedures.

Edward Jennings clarified that Mr. Carucci requested to use that building due to his other building on South Union St was getting renovated. He was allowed to use the building due to it was a similar use variance at that time and was within 1 year. He continued that it was storage facility and Mr. Carucci was using it to store buses and office space and letters to the neighborhood was not needed however; Mr. Carucci was given stipulations that if his business expanded or use changed then he would need to obtain a use variance. Edward continued in his opinion the use has changed and Mr. Carucci needs a new use variance which is why he sent Mr. Carucci a letter instructing him that he needs to obtain a new use variance. Charlotte noted in her opinion the old use variance is now null and void and no longer in place.

A MOTION to exceed the 3 minute public comment for Leonard Anzivine was made by Bob Moser, seconded by Darryl Bloom. Voice vote, ayes all, Motion carried.

Leonard Anzivine commented that he is glad that the car wash is now out of the building. He questioned where the parking is for his 36 employees, and feels bad that Mr. Carucci has a financial commitment to that building and his employees.

Kay Anzivine (129 S. 4<sup>th</sup> St.) she explained that maybe it is true that Mr. Carucci addresses issues however; the issues that he cannot address is the noise, smell and buses in the road. She noted that she has to sell 3 properties on this street all because of this business. She stated there is a red light at the end of the street and a lot of cars and children use this street because of the light and there are no flaggers for children to cross safely. She noted on that street they have to deal with Cabinet Word, the bus stop and the pizza shop. She noted the buses are now blocking their very busy street.

Brian Snyder (Olean Area Federal Credit Union) he explained revoking this variance will have serious consequences on Mr. Carucci. He explained Mr. Carucci was granted a mortgage on this building based on the fact he had the original variance and has spent thousands of dollars on this building. He continued they granted subsequent finances based on having this building to operate. If he is not granted this variance this would have serious consequences on the credit union.

Terry Grant (112 S, 2<sup>nd</sup> St.) he stated that he is Mr. Carucci accountant and advised him Not to purchase a building in Olean. He stated that he advises his clients to purchase elsewhere due to his biggest concern is having to face people like this because people who move in next door and complain. He noted as a CPA he advises people because of the trend in this city.

Larry Sorokes (Greater Olean Chamber of Commerce) he stated his job is to support business in Olean and he empathizes with the people of the neighborhood frustration however in his estimation here is a gentleman that is extremely invested in this community and Mr. Carucci went into this with the understand that everything was going to be ok. He noted that that a business growing into 30 + employees is rarely unheard of. He hopes that everyone can work thru this and make every effort not to lose a business in Olean. He noted Mr. Carucci has received many business awards form Greater Olean Chamber of Commerce.

Mr. Carucci (applicant) would like to address some of the concerns of the neighborhood. He stated since he opened up on South Fourth St. Epic Church obtained IJN and now BOCES is located there. He noted there are 12 buses not including RIT buses that go up and down the street between the hours of 7:45-8:30 every morning and between 2:15-3:30 every afternoon totaling 24 buses daily. He explained his buses have electronic logs and if they break the time frame the bus will not allow you to log on and the bus cannot move not to mention he could be fined up to \$2,000.00. Mr. Carucci clarified he filled out all the OSHA forms and has not heard from OSHA since. DEC came in and sat in his office and went thru everything and they have not been back

since. Mr. Carucci stated when he was the mayor and it was a wood drying facility he and Mr. Jennings was there several times regarding complaints of loud humming and wood drying and there was nothing that could be done about it. Mr. Carucci stated the car wash has been moved back to South Union St. since the painting had been completed and was unavailable until this time.

Mr. Carucci explained the property with the wood sticks on the corner had nails on them and when he left at 5:00 p.m. today all the stakes were there and he mentioned that he has plowed the entire joint driveway as a courtesy since he moved in.

Mr. Carucci explained in Mr. Jennings letter dated September 21, 2016 first paragraph, last sentence reads: "It was stipulated that if the Use of the building changed you would be required to apply for a Use Variance and obtain permission to operate there from the Zoning Board of Appeals". He stated he stores vehicle and has offices there and just because he expanded with more vehicles nothing has changed since he was given the ordinance initially and the bank would not have given him a loan without a letter that stated he could move in there. He questioned again why is here when all he did was add a few more vehicles. He explained the lights cannot be shut off when the bus is in drive or reverse so now late buses pulls into the garage however; with it becoming dark at 5:00 p.m. there will be lights shining into the house.

A MOTION was made by Bob Moser, seconded by Thomas Enright to close the public at 6:36pm. Voice vote, ayes all. Motion carried

Charlotte questioned Edward if this building was for a temporary use due to the South Union St. renovation. Edward responded that Mr. Carucci was allowed to use the S. 4<sup>th</sup> St. building temporarily and because it was a similar use and if the use changed then he would have to apply for a new use variance. Charlotte questioned what happened to the S. Union St. property because it seems this should have only been a temporary situation. Edward responded she would have to question Mr. Carucci that.

A MOTION was made by Darryl Bloom, seconded by Thomas Enright to re-open the public at 6:58pm. Voice vote, ayes all. Motion carried

Charlotte questioned Mr. Carucci what happened to his S. Union St. property since this seems to be a temporary situation. Mr. Carucci responded the buses were never part of S. Union St. property and that the buses have always been parked at 117 S. 4<sup>th</sup> St. since the day he purchased the property. Charlotte questioned her understanding from the letters was that Mr. Carucci was going to build at S. Union St. to accommodate the buses. Mr. Carucci responded you cannot build on S. Union St. due to space. Charlotte questioned the purpose of the South Union Street property. Mr. Carucci responded that DEC contamination had ripped up the South Union St. property and Rocky was selling the building and once he received the variance on the building with the help of the Credit Union is when the sale went thru. Charlotte stated the letter clearly states that it was for temporary permission to use the building. Mr. Carucci responded it was stipulated he would have to get a use variance only if the use changed, and it has not changed. Charlotte questioned what happened to the S. Union St. property. Mr. Carucci responded he sold it approximately 8 or 9 months ago. Charlotte noted the time of the letters was written March

2015 you were given permission to use the S. Fourth St. property while construction was happening on South Union St. property at that time. Mr. Carucci responded the letter states he has permission to use the S. 4<sup>th</sup> St. building for the storage of a few vehicles and offices with the understanding as long as he uses the building in the same manner as Rocky did. Charlotte responded Rocky did not have buses in the building. Mr. Carucci noted he has had buses in there since 2012. Charlotte stated the use variance that was given to Rocky was for a wood business not a bus business which is a difference use.

Darryl Bloom questioned why do buses need to idle, what is the minimal amount of time for a bus to idle and still be productive. He questioned the earliest time at night to end business, and the latest time to start business and still maintain his business and can the buses idle inside of the building. Mr. Carucci responded it takes approx. 7-10 minutes to warm up and build up air pressure as well as fundamental items to run. He also stated he runs 24/7 operation and is sole supporter for multiple schools and colleges at all random times and cannot have set hours. Darryl questioned if he was to receive a variance with stipulated hours what would he feel would be adequate. Mr. Carucci stated he cannot exist with stipulated hours because he has no idea when and where he will be needed to go. Mr. Carucci reiterated the buses will idle 10 minutes inside or the drivers will lose their \$100.00 safety bonus.

Mr. Carucci stated that he would be open to any suggestions to make this work even if it means he needs to get a flagger. He noted he just hired 3 more employees on job training because he cannot get enough employees due to his demand is growing. He further explained all vehicles with the exception of a couple of buses will be parked inside. The exception will be 2 buses have to park outside at night so that the night time buses can pull the buses in and not back in.

Thomas Enright questioned if he has a contingency plan to funnel the fumes thru the roof if he is granted the variance. Mr. Carucci stated he was there an entire year prior to anyone having an issue with the fumes. He runs his buses inside, door closed for 10 minutes. He noted if it comes down to it he will look at the feasibility of doing it.

Charlotte questioned if his business is going to expand his fleet. Mr. Carucci said he is done purchasing vehicles there is no room left in the building.

Darryl questioned how sound proof is the building. Mr. Carucci stated it is a block building and if he needs to bring someone in to look at the building he will.

Thomas questioned since he filed with DEC & OSHA do they do regular inspections. Mr. Carucci responded no they are not, they sent a questionnaire and it was filled out and returned and they have not contacted him. He noted his buses are clean air buses.

Charlotte questioned the August 4, 2017 letter paragraph 4 that Mr. Carucci received reads as followed: "The use of the premises as the operations center for your transportation business is a "new use" and has significantly increased the "intensity of the use" that was contemplated in the original site plan review approved in favor of the previous owner. Mr. Carucci responded they do travel in and out more and in his opinion it has been the same amount of traffic since 2012 and nobody came and told him he was going to have a problem.

Shayne questioned if he was going to have passenger buses or just charter buses. Mr. Carucci responded he was charter bus only.

Mr. Carucci explained that he had a meeting with mayor, city attorney and Ed Jennings and they spoke in regards to the law. He continued to explain if you look at the time frame of the letters once Mr. Carucci rebutted the letter it took 7 months for a response from the city in which due the lack of response Mr. Carucci was under the impression that the city agreed with him until he received the second letter. Thomas clarified that it was Mr. Carucci's interpretation.

Mr. Carucci reiterated that he would build a taller fence or noise barriers to make this variance work to keep this perfect and big building.

A MOTION was made by Thomas Enright, seconded by Darryl Bloom to close the public Hearing at 7:12p.m. Voice vote, ayes all. Motion carried

A MOTION was made by Bob Moser, seconded by Shayne Certo to table the meeting. Meet October 12, 2017 for discussion only, decision within 62 days of public hearing. Voice vote, ayes all. Motion carried

### **Adjournment**

A MOTION to adjourn was made by Thomas Enright, seconded by Darryl Bloom. Voice vote, ayes all, Motion carried.

### **Next Meeting Date**

The next Zoning Board meeting has been scheduled for Thursday, October 12, 2017 at 5:30 p.m. located in room 119. Meeting adjourned at 7:23 pm.